

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH STEWART, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 18-cv-01778-PJH

**ORDER GRANTING LEAVE TO FILE
THIRD AMENDED COMPLAINT**

Re: Dkt. No. 43

Before the court is plaintiff Kenneth Stewart, III's motion for leave to file a third amended complaint. The matter is fully briefed and suitable for decision without oral argument. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

This lawsuit arises out of plaintiff's father's, Kenneth E. Stewart, Jr.'s (the "decedent"), suicide committed while an inmate at San Quentin State Prison ("SQSP"). The court dismissed plaintiff's First Amended Complaint because it was too threadbare and merely recited the elements of plaintiff's claims. Dkt. 24.

On November 29, 2018, the court granted in part and denied in part defendant State of California's (the "State") motion to dismiss plaintiff's Second Amended Complaint (the "SAC"). Dkt. 41. Specifically, the court denied the State's motion to dismiss plaintiff's claim brought under the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12132 & the Rehabilitation Act (the "RA") and granted with leave to amend the State's motion with respect to plaintiff's Cal. Gov. Code § 845.6 claim. Id. The court found that plaintiff's § 845.6 claims remained too conclusory to state a plausible claim for relief because, though plaintiff alleged a conversation took place between the decedent and an

1 SQSP guard, the SAC was devoid of factual allegations providing context to that
2 conversation. Dkt. 41 at 1-2.

3 During the hearing on the State's motion to dismiss the SAC, plaintiff requested
4 leave to amend his complaint a third time to include allegations based on SQSP records
5 plaintiff received on October 23, 2018. Accordingly, the court's November 29, 2018 order
6 directed plaintiff to file a motion for leave to file a Third Amended Complaint (the "TAC").
7 With respect to plaintiff's Cal. Gov. Code § 845.6 claim, the court stated that "any
8 amendment to plaintiff's § 845.6 cause of action must be supported by additional factual
9 allegations, if any exist, about the alleged conversation between the decedent and the
10 unidentified guard and may also be supported by factual allegations based on the SQSP
11 records[.]" Dkt. 41 at 3.

12 Plaintiff's motion for leave to file the TAC is now before the court. The TAC
13 primarily adds allegations relating to the decedent's placement into Administrative
14 Segregation ("Ad Seg"). The TAC alleges that on January 21, 2017, defendants Jeffrey
15 M. Carlton, Eric E. Evans, and Jack E. Dougery placed the decedent into Ad Seg for non-
16 disciplinary reasons. TAC ¶ 16. Despite policies to the contrary, the decedent, who
17 defendants knew to be seriously mentally ill, was left in Ad Seg for a period exceeding 72
18 hours. TAC ¶¶ 17-19. On January 25, 2017, defendant April D. Maxfield, a Correctional
19 Counselor at SQSP, visited the decedent and "determined that the decedent would
20 remain in Ad Seg indefinitely, despite the fact that she knew the decedent was mentally
21 ill, had already been in Ad Seg for five consecutive days, and knew that [the] decedent
22 had requested, and had continually been denied any mental health care." TAC ¶ 22.
23 Further, the TAC alleges that Maxfield knew that the decedent's continued placement in
24 Ad Seg and the continued failure to provide medical care would likely result in the
25 decedent committing suicide. Id. Nonetheless, Maxfield failed to take any action to
26 summon appropriate care, even though Maxfield was aware that the decedent's mental
27 health had deteriorated during his time in Ad Seg. Id. ¶ 22.

28 Two days later, the decedent was found dead in his cell and the cause of death

1 was determined to be asphyxia resulting from suicide by hanging. Id. ¶ 23.

2 After a party has amended a pleading once as a matter of course, it may only
3 amend further after obtaining leave of the court, or by consent of the adverse party. Fed.
4 R. Civ. P. 15(a). "Generally, Rule 15 advises the court that leave shall be freely given
5 when justice so requires. This policy is to be applied with extreme liberality." Eminence
6 Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotation
7 marks omitted). Leave to amend is thus ordinarily granted unless the amendment is
8 futile, would cause undue prejudice to the defendants, or is being sought by plaintiffs in
9 bad faith or with a dilatory motive. Id.

10 The State only opposes plaintiff's motion with respect to plaintiff's § 845.6 claim.
11 The State argues that in contravention of this court's November 29, 2018 order, plaintiff
12 has failed to provide any additional context about the decedent's conversation with the
13 unidentified guard. Thus, according to the State, plaintiff should not be allowed to amend
14 his § 845.6 claim.

15 The court disagrees. The TAC's allegations about the decedent's nearly week-
16 long non-disciplinary placement into Ad Seg and about defendant Maxfield's January 25
17 visit elevates plaintiff's § 845.6 claim from conclusory to plausible. Accordingly, the court
18 finds that the proposed amendment would not be futile.

19 CONCLUSION

20 For the foregoing reasons, plaintiff's motion for leave to file a TAC is GRANTED.
21 Plaintiff shall file the TAC by January 4, 2019. Plaintiff shall serve all defendants by
22 January 25, 2019.

23 **IT IS SO ORDERED.**

24 Dated: January 2, 2019



25 PHYLLIS J. HAMILTON
26 United States District Judge
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